

## **REMARKS**

Claims 1-103 were pending before entry of the present amendments. Claims 11-65 and 72-103 have been canceled without prejudice. Applicants reserve the right to prosecute the subject matter of the canceled claims in one or more related divisional, continuation, or continuation-in-part application(s).

### **THE REJECTION UNDER 35 U.S.C. § 112 SHOULD BE WITHDRAWN**

Claims 11-65 and 72-103 have been rejected for lack of enablement under 35 U.S.C. § 112. In particular, the Examiner alleges that the specification, while being enabling for treating human lung cancer and for treating<sup>1</sup> fungal infection caused by *Saccharomyces* and *Candida*, does not provide enabling disclosure showing that any cancer and all fungal infectious diseases, respectively, can be treated with the compounds. Applicants respectfully assert that the specification does provide enabling disclosure showing that any cancer and all fungal infectious diseases, respectively, can be treated with the compounds. However, solely to expedite the prosecution of this application, Applicants have canceled claims 11-65 and 72-103.

Accordingly, Applicants respectfully request that the rejection of claims 1-10 and 66-71 under 35 U.S.C. § 112 be withdrawn.

### **THE REJECTION UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING SHOULD BE WITHDRAWN**

Claims 1-103 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-66 of copending application no. 10/865,262 filed June 10, 2004 ("the '262 Application"). Applicants respectfully direct the Examiner's attention to the submission of a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) in the '262 Application.

According to M.P.E.P. § 804.I.B., a provisional double patenting rejection should continue to be made unless the provisional double patenting rejection is the only rejection remaining. The rejection under 35 U.S.C. § 112 is moot in view of the cancellation of claims

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<sup>1</sup> The Office Action states "testing" for fungal infection. However, Applicants believe that this is a typographical error because the claims are directed to methods of treating.

11-65 and 72-103. Thus, the provisional double patenting rejection is the only rejection remaining and should be withdrawn.

Accordingly, Applicants respectfully request that the rejection of claims 1-103 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

### Conclusion

Applicants respectfully submit that all of the pending claims are now in condition for allowance. If the Examiner disagrees, he is invited to call the undersigned to schedule an interview to resolve any remaining concerns.

It is believed that no fee is due in connection with this Reply other than that for the extension of time; however, in the event any additional fee is required, please charge the required fee to Jones Day Deposit Account No. 50-3013.

Respectfully submitted, *by: Sebastian Kartwiele*  
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